

To: Anthony Biller(ajbiller@envisage.law)
Subject: U.S. Trademark Application Serial No. 97208978 - THE CHOSEN - 40572.3003
Sent: June 03, 2023 06:33:18 PM EDT
Sent As: tmng.notices@uspto.gov

Attachments

**United States Patent and Trademark Office (USPTO)
Office Action (Official Letter) About Applicant's Trademark Application**

U.S. Application Serial No. 97208978

Mark: THE CHOSEN

Correspondence Address:

Anthony Biller
Envisage Law
2601 Oberlin Road
Raleigh NC 27608
UNITED STATES

Applicant: COME AND SEE FOUNDATION, INC

Reference/Docket No. 40572.3003

Correspondence Email Address: ajbiller@envisage.law

**SUSPENSION NOTICE
No Response Required**

Issue date: June 3, 2023

The application is suspended for the reason(s) specified below. *See* 37 C.F.R. §2.67; TMEP §§716 *et seq.*

The pending application(s) below has an earlier filing date or effective filing date than applicant's application. If the mark in the application(s) below registers, the USPTO may refuse registration of applicant's mark under Section 2(d) because of a likelihood of confusion with the registered mark(s). 15 U.S.C. §1052(d); *see* 37 C.F.R. §2.83; TMEP §1208.02(c). Action on this application is suspended until the prior-filed application(s) below either registers or abandons. 37 C.F.R. §2.83(c). Information relevant to the application(s) below was sent previously.

- U.S. Application Serial No(s). 97068537, 88615594, 88593715, 90902594

Pending Application Serial No. 87685011 has since registered. Registration will be refused following the disposition of the above referenced prior-pending applications.

Refusal(s) and/or requirement(s) resolved and maintained and continued. The following refusal(s) and/or requirement(s) is/are obviated:

- Specimen Refusal - Ornamental - In light of applicant's prior registration, U.S. Registration No. 6647303, for the exact same mark.

See TMEP §713.02.

The following refusal(s) and/or requirement(s) is/are maintained and continued:

- Section 2(d) Refusal – Likelihood of Confusion - Applicant's arguments have been considered and found unpersuasive. Applicant's fame as argued by applicant and therefore, the purported lack of fame of the cited mark, is not significant to the issue of likelihood of confusion in ex parte examination. *See In re Davey Prods. Pty Ltd.*, 92 USPQ2d 1198, 1204 (TTAB 2009) (citing *In re Thomas*, 79 USPQ2d 1021, 1027 n.11 (TTAB 2006)); TMEP §1207.01(d)(ix). Because the types of evidence bearing on the fame of a registered mark include the volume of sales, advertising expenditures, and length of use of the mark, and such evidence normally is not publicly available, trademark examining attorneys are not expected to submit evidence regarding the fame of a cited registered mark in ex parte proceedings. TMEP §1207.01(d)(ix); *see In re Mr. Recipe, LLC*, 118 USPQ2d 1084, 1086 (TTAB 2016) (citing *In re Thomas*, 79 USPQ2d at 1027 n.11). When no evidence of fame has been provided, this du Pont factor is usually treated as neutral. *See In re Mr. Recipe, LLC*, 118 USPQ2d at 1086. Thus, in this case, this factor is considered neutral for purposes of determining likelihood of confusion. Moreover, the Trademark Act not only guards against the misimpression that the senior user is the source of a junior user's goods, but it also protects against "**reverse confusion**," where a significantly larger or prominent junior user is perceived as the source of a smaller, senior user's goods such that the "senior user may experience diminution or even loss of its mark's identity and goodwill due to extensive use of a confusingly similar mark by the junior user" for related goods. *In re i.am.symbolic, llc*, 866 F.3d 1315, 1329, 123 USPQ2d 1744, 1752 (Fed. Cir. 2017) (quoting *In re Shell Oil Co.*, 992 F.2d 1204, 1208, 26 USPQ2d 1687, 1690 (Fed. Cir. 1993)); *Fisons Horticulture, Inc. v. Vigoro Indust., Inc.*, 30 F.3d 466, 474-75, 31 USPQ2d 1592, 1597-98 (3d Cir. 1994). Applicant's arguments, however, will be addressed in detail upon condition for final action if this Section 2(d) refusal is maintained.

See id. These refusal(s) and/or requirement(s) will be made final once this application is removed from suspension, unless a new issue arises. *See* TMEP §716.01.

Suspension process. The USPTO will periodically check this application to determine if it should remain suspended. *See* TMEP §716.04. As needed, the trademark examining attorney will issue a letter to applicant to inquire about the status of the reason for the suspension. TMEP §716.05.

No response required. Applicant may [file a response](#), but is not required to do so.

/Salima Oestreicher/
Salima Oestreicher
Examining Attorney
LO128--LAW OFFICE 128
(571) 272-6786
Salima.Oestreicher@USPTO.GOV

United States Patent and Trademark Office (USPTO)

USPTO OFFICIAL NOTICE

Office Action (Official Letter) has issued
on June 3, 2023 for

U.S. Trademark Application Serial No. 97208978

A USPTO examining attorney has reviewed your trademark application and issued an Office action. You may be required to respond to this Office action. Follow the steps below.

- (1) **[Read the Office action.](#)** This email is NOT the Office action.
- (2) **Respond to the Office action, if a response is required.** Respond by deadline using the Trademark Electronic Application System (TEAS). Your response must be received by the USPTO on or before 11:59 p.m. **Eastern Time** of the last day of the response period. Otherwise, your application will be [abandoned](#). See the Office action itself regarding how to respond.
- (3) **Direct general questions** about using USPTO electronic forms, the USPTO [website](#), the application process, the status of your application, and whether there are outstanding deadlines to the [Trademark Assistance Center \(TAC\)](#).

After reading the Office action, address any question(s) regarding the specific content to the USPTO examining attorney identified in the Office action.

GENERAL GUIDANCE

- **[Check the status](#) of your application periodically** in the [Trademark Status & Document Retrieval \(TSDR\)](#) database to avoid missing critical deadlines.
- **[Update your correspondence email address](#)** to ensure you receive important USPTO notices about your application.
- **[Beware of trademark-related scams](#)**. Protect yourself from people and companies that may try to take financial advantage of you. Private companies may call you and pretend to be the USPTO or may send you communications that resemble official USPTO documents to trick you. We will never request your credit card number or social security number over the phone. Verify the correspondence originated from us by using your Serial Number in our database, [TSDR](#), to confirm that it appears under the “Documents” tab, or contact the [Trademark Assistance Center](#).
- **[Hiring a U.S.-licensed attorney](#)**. If you do not have an attorney and are not required to

have one under the trademark rules, we encourage you to hire a U.S.-licensed attorney specializing in trademark law to help guide you through the registration process. The USPTO examining attorney is not your attorney and cannot give you legal advice, but rather works for and represents the USPTO in trademark matters.